

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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|                           |   |                            |
|---------------------------|---|----------------------------|
| ELLEN BASQUE,             | ) |                            |
|                           | ) |                            |
| Appellant,                | ) | DOCKET NO.: PT-2000-6      |
|                           | ) |                            |
| -vs-                      | ) |                            |
|                           | ) |                            |
| THE DEPARTMENT OF REVENUE | ) | FACTUAL BACKGROUND,        |
| OF THE STATE OF MONTANA,  | ) | CONCLUSIONS OF LAW,        |
|                           | ) | ORDER and OPPORTUNITY      |
| Respondent.               | ) | <u>FOR JUDICIAL REVIEW</u> |

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The above-entitled appeal was heard on August 14, 2001 in the City of Superior, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The Appellant, represented by her son and daughter-in-law, Marc and Joy Basque, provided testimony in support of the appeal. Joyce Weaver, appraiser, and James Fairbanks, Region 4 Lead, represented the Respondent, Department of Revenue (DOR) and provided testimony in opposition to the appeal. Testimony was presented and exhibits were received. The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions.

Mrs. Basque is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence and testimony, the Board affirms the market value of the land

established by DOR under jurisdiction of the Montana Code Annotated (MCA) and Administrative Rules of Montana (ARM). The DOR has demonstrated to this Board that its appraisal of the subject state-leased land was accomplished pursuant to §77-1-208, MCA.

#### **STATEMENT OF THE ISSUE**

The issue before this Board in this appeal is the proper valuation of land owned by the State of Montana and leased as a cabin site in accordance with §77-1-208, MCA. The market value of improvements are not in contention in this appeal.

#### **FACTUAL BACKGROUND**

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The property which is the subject of this appeal is land leased from the State of Montana and described as follows:

Five acres on Fish Creek in Section 30, Township 13 North, Range 24 West, County of Mineral, State of Montana. (Lease number L-3061088).
3. For the 2000 tax year, the DOR appraised the subject leased lot at a value of \$23,000.
4. Mrs. Basque filed a timely appeal with the Board on October 13, 2000, requesting a market value of \$10,000, stating:

*Unjustified increase. Increased 383%. We feel land is being appraised with improvements and those improvements are already being taxed in personal property. Land is 23 miles from nearest town with no utilities or road maintenance or any other benefits received from county or*

state.

5. The Board has jurisdiction in this matter, pursuant to §77-1-208, MCA.

#### **TAXPAYER'S CONTENTIONS**

Mr. Basque questioned why the DOR has valued the first acre at \$15,000 and the remaining acreage at \$2,000, i.e., how one acre can be worth so much more than the rest of the acreage when all of the acreage is very similar. Mr. Basque's argument, and the rationale for his requested value, is that, if four acres are valued at \$2,000 each, then the fifth acre should also have a value of \$2,000. His requested value is based upon his assertion that each of the five acres should be valued at \$2,000 each, or \$10,000.

Mr. Basque also questioned the comparability of the properties selected by the DOR's valuation methodology. The subject property is located approximately 16 miles up Fish Creek Road and 24 miles northwest of the town of Alberton. It is not served by paved roads, fire protection, telephone or electricity service. Mr. Basque's position is that the presence, or absence, of these amenities does impact market value.

The subject property is used as a homesite by Marc and Joy Basque. Because they lease it from the State of Montana, and therefore cannot sell it, the lack of a full bundle of rights should be recognized in the DOR appraisal.

Mr. Basque further argued that, because they have been diligent in improving and maintaining the property, their fiscal

liability has increased, both in terms of property taxes for their cabin and fee payment for the leased land. The improvements they've made cannot be recouped because they could never sell the land. Mr. Basque suspects the land was valued with an eye towards the condition of the improvements (the cabin or residential structure) instead of considering how the property (the land) might have looked in its unimproved state.

Appellant's Exhibit 1 is a copy of the AB 26 form for property review. The DOR declined to make an adjustment in its appraisal upon review of the property.

Appellant's Exhibit 2 is a copy of a November 3, 1995 letter to Ellen Basque from Jeanne Fairbanks, supervisor of the Special Uses Section of the Trust Land Management Division (DNRC). This letter explains the fee schedule for the lease of the subject property. At that time, the DOR appraised value of the land was \$6,000 and the annual rental fee was \$210 (3.5 percent of the appraised value). Mr. Basque included this exhibit to demonstrate that, in five years, the rental fee has almost quadrupled. Mr. Basque feels that this increase is excessive.

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Appellant's Exhibit 3 contains five pages of listings and sales information from realtors concerning land that Mr. Basque feels is reasonably comparable to the subject. Summarized, this exhibit depicts the following:

|         | <b>Size</b> | <b>Location</b>           | <b>Terrain</b> | <b>Sale Price</b> | <b>Sale Date</b> |
|---------|-------------|---------------------------|----------------|-------------------|------------------|
| Sale #1 | 16 acres    | Rock Creek/Granite        | Rolling        | \$10,000          | 05/15/2000       |
| Sale #2 | 9 acres     | Garnet Mining District    | Varies         | \$12,000          | 07/19/2000       |
| Sale #3 | 8 acres     | Granite/Powell            | Varies         | ?                 | ?                |
| Sale #4 | 16 acres    | East Missoula/Bonner East | Varies         | \$22,500          | 08/31/1998       |
| Sale #5 | 4.60 acres  | East Missoula/Bonner East | Hilly          | Not available     | Not available    |

In reference to the above properties, Mr. Basque stated that they were attempting to find sales of properties "a little further out than in our area here." Mr. Basque's testimony was that the above sales demonstrate that "the DOR appraisal was unfair due to these prices here that the realtors were asking in comparison to other property. The first example is . . . where the price asking here is \$10,000 for 16 acres. If you actually go from our standards to this standards here of what the Department of Revenue showed us how they came up with an amount on our property, if you take the first acre for \$15,000 and then \$2,000 on every other acre, this would put this particular piece of property up in the \$45,000 range instead of \$10,000 range. . .so I feel this is showing the Department of Revenue and this Board that there is

evidence out there showing that the appraised amount that the Department of Revenue has come up with is unfair and unjust." Mrs. Basque stated that the realtor from which she gathered the above sales information had no relevant sales information from Mineral County.

Mr. Basque discussed the access to the subject property. The residence is served by a dirt road (Fish Creek Road), which is not maintained by the county or state.

The Board received Mr. Basque's response to the DOR's post-hearing submission on September 24, 2001. In this response, Mr. Basque stated that he had personally checked every piece of property referenced by the DOR in its Exhibit A. Mr. Basque concluded that all of the sold properties were superior to the subject in terms of access to such amenities as fire protection, utilities, schools, mail service, paved roads and proximity to town. He also made reference to the presence of several improvements on the DOR's comparable properties.

The Board received Mr. Basque's response to the DOR submission of the property record cards for its comparable properties on October 19, 2001. Again, Mr. Basque concluded that none of the DOR's comparable properties compared to the subject in terms of remoteness of location.

#### **DOR CONTENTIONS**

DOR Exhibit A is entitled "Mineral County Vacant Land Sales" and provides the basis upon which the DOR determined the subject

appraised value of \$15,000 for the first acre and \$2,000 for each acre below or above one acre.

| ACREAGE | SALE DATE      | SALE PRICE  | PRICE PER ACRE |
|---------|----------------|-------------|----------------|
| 2.000   | August 1996    | \$16,470.00 | \$8,235.00     |
| 10.290  | November 1996  | \$37,000.00 | \$3,595.72     |
| 3.000   | November 1996  | \$40,000.00 | \$13,333.33    |
| 3.000   | November 1996  | \$24,335.00 | \$8,111.67     |
| 1.800   | July 1996      | \$10,000.00 | \$5,555.56     |
| 17.007  | September 1994 | \$43,000.00 | \$2,528.37     |
| 17.007  | August 1996    | \$55,000.00 | \$3,233.96     |
| 13.460  | November 1996  | \$62,000.00 | \$4,606.24     |

Ms. Weaver stated that the last four of the above sales (sales five through eight) are located within approximately 15 miles from the Fish Creek Drainage, thus making them closest in proximity to the subject. Sales information in the immediate vicinity of the subject is very limited due to limited availability of privately owned property in the area. The ownership of property in the vicinity of the subject lies primarily with the Forest Service, the State of Montana and Plum Creek Lumber Company.

Ms. Weaver testified that sales five through eight are comparable to the subject with respect to access. "None of these are in an actual subdivision. They're all just small tracts out away from towns."

She described the location of the subject leased land as "very nice . . . fairly flat. It has Fish Creek, which is a blue

ribbon trout stream, going right through the middle of it. Not too bad of access, dirt/gravel road, but a car can get into it, other than when the county doesn't plow."

Cabins are located on each the five state leases within close proximity to the subject.

DOR Exhibit B is a document entitled "An appraisal report for the Department of Natural Resources and Conservation, State of Montana, Cabin Site Leases in Missoula County" prepared by James Fairbanks, Region 4 Lead for the Department of Revenue. Mr. Fairbanks noted that this document is not specific to the subject property, nor even to Mineral County.

The exhibit outlines the history of the DOR's involvement in the valuation of state leased land. The appraisal must obtain full market value pursuant to Section 77-1-208, MCA. The DNRC (Department of Natural Resources and Conservation) lease fee is 3.5 percent of the DOR appraised value. *"The valuation of tract land and other parcels in the area where the lease is located should serve as the basis for valuation of the cabin site acreage."* (Section 77-1-208, MCA).

The Computer Assisted Land Price (CALP) system is based on the principle that it is possible to arrive at a reasonable and satisfactory estimate of land value through the application of various incremental adjustments and influence factors to a BASE PRICE paid for a unit of land. The unit of land may be a standard lot size in front feet, or in acres. Once the BASE SIZE and BASE



VALUE is determined, the PRIMARY and RESIDUAL VALUES are assigned. Parcels that are smaller or larger than the BASE are adjusted from the BASE VALUE by the residual. (DOR Exhibit B, page 3)

By way of a clarification of the DOR's primary and residual land pricing methodology, Mr. Fairbanks explained that, typically the larger the parcel size, the smaller per acre sale price. "We're not identifying one acre. What we're really saying is five acres is worth \$23,000, but since we have to do [appraise] a two acre piece as well, which is gonna be more valuable, per acre, than yours and a ten acre piece, which is gonna be less valuable per acre than yours, we can use this base, in other words, we determine what a one acre piece is worth and also determine, as the pieces get bigger, what is the contributing factor. Certainly not \$15,000 per acre. So, a one acre piece, we say, is worth \$15,000. A two acre piece, we say, would sell for \$17,000. That's \$8,500 an acre. A five acre piece, like yours, we say is worth \$23,000. That drops to \$4,600 an acre. And a ten acre piece would come in at \$33,000. That's \$3,300 an acre. . . That's why we use the primary and residual."

#### **BOARD DISCUSSION**

The Board received the DOR's post-hearing submission, due August 24, on September 5. The Board had asked the DOR to compare the properties referenced in its Exhibit A to the subject property, in terms of location, amenities, rural fire protection, access, topography, size and presence or absence of utilities, i.e., the

comparability of the subject to the sold properties. The Board also asked the DOR to provide a map showing the location of the subject property and of the sales referenced on DOR Exhibit A.

The DOR did not address the presence or absence of utilities, but did provide its opinion on the other aspects of comparability.

Because the DOR assigned a dollar and a percentage value to such aspects as proximity to town, amenities/view, fire protection, access, topography and size without support for these adjustments, the Board will disregard those opinions. In addition, the Board notes that the DOR erred in applying these adjustments. Instead of subtracting an adjustment for a superior aspect on a comparable property to make it look more like the subject, the DOR added the value of that superior aspect to the sales price. Likewise, the DOR subtracted an adjustment for an inferior aspect rather than adding it to the sales price of the comparable. The DOR appraiser should be cognizant that, if she is going to make dollar or percentage adjustments, she had better present the supporting documentation to convince the Board. Therefore, what was presented in the post-hearing submission with respect to value adjustments, is considered to be arbitrary and capricious.

The Board merely asked the DOR to make a comparison of the subject to the DOR comparable properties in terms of several key points impacting comparability, i.e., whether or not the DOR considered the subject to be inferior, similar or superior to the DOR's sold properties. This request was made in an attempt to

develop an indication of the reliability of the market value obtained by the DOR through the sales comparison approach it used to value the subject property.

In response to the Basque post-hearing submission, the Board asked the DOR to provide it with copies of the property record cards for the properties which Mr. Basque indicated held improvements since the Board was under the impression that the DOR's sales were of vacant land. The DOR responded with the requested copies on October 9.

The Board analyzed the amenities/characteristics of the sold properties, as reported by the DOR. It appears that the 13.46 acre property (sale number eight), which sold in November of 1996 for \$62,000, is the most comparable to the subject in terms of location, amenities/view, lack of rural fire protection, access and topography. Upon receipt of the property record card for this property, it appears that it was not truly vacant at the time of sale. The property record card indicates that two small structures, presumably sheds of some sort, were present. The DOR had assigned a value of \$1,010 total for the two structures. When the DOR improvement value is subtracted from the sales price, the indication from this sale is \$4,531 per acre, which is supportive of the DOR value of \$4,600 per acre. If one argues that a larger parcel will generally sell for less per acre than a smaller parcel, the subject five acre parcel might even be expected to have a market value of more than \$4,531. (The Board also notes that,

contrary to DOR Exhibit A, sales number two and number six were not of vacant land parcels either. The property record cards indicate the presence of structures on these properties as well at time of sale.) However, to address Mr. Basque's concerns regarding structures and/or residences upon the other properties, an examination of the property record cards indicates that the majority of these improvements, with the exception of those discussed above, were placed upon the properties **after the date of sale.**

The taxpayer was given the opportunity to provide an opinion as to the comparability of the DOR sales to the subject. Mr. Basque concluded that all of the sold properties were superior to the subject in terms of access to such amenities as fire protection, utilities, schools, mail service, paved roads and proximity to town. He further concluded that "property number two" was the closest to the subject in terms of "looks." He stated that the most current appraised value of this property is \$18,305, or \$1,778.92 per acre. According to Mr. Basque, this property has access to all utilities and is in a subdivision. Because the subject property does not enjoy these amenities, Mr. Basque arrived at a requested value of \$1,500 per acre, or \$7,500 for the subject five acres. This is a reduction from the \$10,000 requested value before this Board at the hearing held on August 14, 2001.

As stated above, the Board contacted the DOR upon receipt of Basque post-hearing response to obtain copies of certain property

record cards. The Board asked for the property record cards pertaining to each of the properties for which Mr. Basque asserted the presence of improvements because the DOR's exhibit at hearing led the Board to believe that the sales used to value the subject lot were of **vacant** land. The Board also asked Ms. Weaver to provide an illustration of the method the DOR used to allow for the presence of any improvements existing at the time of sale. The DOR responded with the property record cards but did not elaborate on the method used to extract improvement value from sales price.

This Board understands that the appellant cannot sell the property, but the DOR is charged with appraising the property at full market value pursuant to §77-1-208, MCA. The only way to appraise property is to extract data from the market. We also recognize that the sales presented by the DOR are not an exact comparable to the subject property. The appraisal process recognizes this when adjustments are made to what are deemed to be the best, or more comparable, transactions. It could be argued that an exact comparable is unattainable unless the property being appraised recently sold.

Legislation has determined the lease rate and also assigned the DOR with the responsibility of conducting appraisals for DNRC.

**Section 9.** Section 77-1-208, MCA, is amended to read: **"77-1-208. Cabin site licenses and leases - method of establishing value.** (1) The board<sup>1</sup> shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. **The fee must attain full market value based on appraisal of the cabin site value**

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<sup>1</sup> Board of Land Commissioners

as determined by the Department of Revenue... The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values (emphasis supplied)...

This Board has studied the history of the legislation that regulates fees for state cabin site leases, as enacted in 1983 and amended in 1989 and 1993. §77-1-208, MCA states "The board (of land commissioners) shall set the annual fee based on **full market value** (*emphasis added*) for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain **full market value** (*emphasis added*) based on appraisal of the cabin site value as determined by the department of revenue..."

The original legislation enacted by the 1983 legislature as House Bill 391 (Chapter 459), reads, in pertinent part:

**AN ACT TO REQUIRE THAT IF THE BOARD OF LAND COMMISSIONERS ADOPTS RULES TO ESTABLISH THE MARKET VALUE OF CABIN SITE LICENSES AND LEASES, IT ADOPT A METHOD OF VALUATION OF CURRENT CABIN SITE LICENSES AND LEASES BASED UPON AN APPRAISED LICENSE OR LEASE VALUE AND A METHOD OF VALUATION OF INITIAL CABIN SITE LICENSES OR LEASES BASED UPON A SYSTEM OF COMPETITIVE BIDDING; AND PROVIDING FOR THE VALUATION, DISPOSAL, OR PURCHASE OF FIXTURES AND IMPROVEMENTS.**

**WHEREAS**, on February 13, 1981, the Board of Land Commissioners proposed to adopt rules concerning surface licenses and leases for the use of state forest lands for recreational cabin sites by private individuals, which rules would have established the market value of recreational cabin site licenses and leases by a system of competitive bidding; and

**WHEREAS**, the rules would have allowed out-of-state interests and other parties to increase by competitive bidding the cost of current cabin site licenses and leases and would thereby have worked a hardship on or dispossessed current licensees and lessees and were therefore subsequently withdrawn by the Board; and

**WHEREAS**, the policy of this state for the leasing of state lands as provided in 77-1-202 is that the guiding principle in the leasing of state lands is "that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state"; and

**WHEREAS**, allowing current cabin site licensees and lessees to

continue to enjoy the benefits of existing licenses and leases and the benefits of their labor is a worthy object helpful to the well-being of the people of this state in that it promotes continuity in the case of state lands, promotes use of state lands by the public by granting a minimal expectation of continuing enjoyment, and promotes satisfaction with governmental processes.

**THEREFORE**, it is the intent of this bill to direct that if the Board of Land Commissioners adopts any rules under whatever existing rulemaking authority it may have to establish the market value of current cabin site licenses or leases, that the Board, in furtherance of the state policy expressed in 77-1-202, adopt a method of establishing the market values of cabin site licenses and leases which would not cause undue disruption to the lives and property of and useful enjoyment by current licensees and lessees.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:**

Section 1. **Method of establishing market value for licenses and leases.** (1) If the board adopts, under any existing authority it may have on October 1, 1983, a method of establishing the market value of cabin site licenses or leases differing from the method used by the board on that date, the board shall under that authority establish a method for setting the market value of:

(a) each cabin site license or lease in effect on October 1, 1983, for each licensee or lessee who at any time wishes to continue or assign his license or lease, which method must be **5% of the appraisal of the license or lease value of the property** (*emphasis added*), which value may be increased or decreased every fifth year by 5% of the change in the appraised value..."

In a previous appeal (*Marilyn A. & Daniel E. Harmon vs. Department of Revenue, PT-1999-19*) testimony was heard that, following the passage of the above legislation, statewide meetings were held with lessees, who expressed their concerns with the 5% fee. This resulted in the reduction to 3.5% (or 70% of the 5%), as implemented by Senate Bill 226 (Chapter 705), passed by the 1989 legislature. As introduced, Senate Bill 226 proposed a reduction of the 5% fee to "1.5% of the appraisal of the cabin site value as determined by the county appraiser." The fiscal note for the bill stated:

"The significant difference between the current process and this proposed law is the percentage used to derive the rental. Current law provides that the rental will be **5% of the lease value (3.5% of appraised value)**. The proposed legislation sets the rental at **1.5%**

of appraised value." (*Emphasis added*).

During the February 1, 1989 hearing on Senate Bill 226 before the Senate Committee on Natural Resources, the following exhibit was presented by the bill's sponsor, Senator Matt Himsl:

#### **RENTAL RETURNS ON CABIN SITES ON STATE LANDS**

The Forestry Division - Department of State Lands is charged with the responsibility of administering the cabin sites...

According to the Forestry Division, 633 cabin sites have been identified on state lands. Almost all of these sites are in areas west of the Continental Divide... All of the identified state land cabin sites were under lease under the old law.

The 1983 Legislature passed HB 391 which instructed the Board of Land Commissioners to change the method of valuing cabin site licenses and leases after October 1, 1983, to:

(a) each cabin site license or lease in effect on October 1, 1983, for each licensee or lessee who at any times wishes to continue or assign his license or lease, which method must be **5% of the appraisal of the license or lease value of the property...** (*Emphasis added*)

The problem surfaced when the department began to implement the 1983 law in 1987 and began issuing notices that the rental fees would be **5% of the appraised value of the land, interpreting lease value to be market value.** (*Emphasis added*). That judgment shot the leases which had been \$150 a year up to \$2,300 a year, in some cases. A storm of protests from the lessees got the department to reconsider and **the Board determined that the "lease value" would be 70% of the appraised market value, then applied the 5%.** (*Emphasis added*) The method still drove the leases sky high and brought into play the appraisal values which the lessees protested. The department appraisers then re-visited the sites and began making adjustments, some of the reappraisals dropped as much as \$10,000. There seems to have been no standard judgment. As an example a lease, which about five years ago was \$50, went up to \$150 and then went up to \$2,300, then dropped \$910 a year. This explains why people are upset.

Senate Bill 226 would be a simple and uniform procedure: The County appraiser, who already goes on the property to appraise the improvements, would appraise the land, just as he does the neighbor. **Since the lessee does not have the rights of the fee-simple landowner, and since the state reserves a "public corridor" on the beach, the lessee does not have a private beach and adjustments in value would be made accordingly.** (*Emphasis added*)

Then if the rental fee would be 1.5% of the appraised value, the lessee would be paying about the same as his neighbor pays in taxes to support the government. However, in this case of state lands, it would go to the state elementary and secondary school funds.

**If the lessee didn't like the appraisal value, he would have the same appeal structure as any other landowner and the system would be uniform.** (*Emphasis added*)

Senator Himsl testified "the 1.5% figure is arbitrary but the



state will find that the total tax runs between 1.4 and 1.8 of the market value." During the committee's executive action on the bill, 1.5% was amended to 2%. As amended, the bill was transmitted to the House and was heard by the House Taxation Committee on March 31, 1989. During the hearing an amendment was proposed to return the fee to the original 5%, but the amendment failed. The committee passed the bill with the 2% rate to the House floor for action, where it was amended to 3.5% and passed. The joint House/Senate conference committee considering the bill's amendments allowed the 3.5% to remain, and the final bill was passed with that percentage. The joint conference committee also added a provision to the bill for a minimum fee, so the final language of the relevant section reads as follows:

§77-1-208, MCA, 1 (a)...The fee must be **3.5%** of the appraisal of the cabin site value as determined by the department of revenue **or \$150, whichever is greater...** (*Emphasis added*)

Senate Bill 424 (Chapter 586), passed by the 1993 legislature, amended §77-1-208 to eliminate the 3.5% annual fee, substituting the language that is presently in statute:

"(1) The board shall set the annual fee **based on full market value** for each cabin site... The fee must **attain full market value** based on appraisal of the cabin site value as determined by the department of revenue." (*Emphasis added*)

An attempt was made in the Senate Taxation Committee to restore the language to 3.5%, but the amendment was defeated. The statute has not been further amended since 1993.

The applicable Administrative Rules of Montana state:

**36.25.110 MINIMUM RENTAL RATES** (6)(a) Effective March 1, 1996, and except

as provided in (b), the minimum rental rate for a cabinsite lease or license is **the greater of 3.5% of the appraised market value of the land**, excluding improvements, as determined by the department of revenue pursuant to 15-1-208, MCA, **or \$250.** (*emphasis added*) (b) For cabinsite leases or licenses issued prior to July 1, 1993, the minimum rental rate in (a) is effective on the later of the following dates: (i) the first date after July 1, 1993, that the lease is subjected to readjustment pursuant to the terms of the lease, or the first date after July 1, 1993, of lease renewal, whichever date is earlier; or (ii) March 1, 1996. (c) Until the minimum rate in (a) becomes applicable, the minimum rate is the greater of 3.5% of the appraised market value of the land, excluding improvements, as determined by the department of revenue pursuant to 15-1-208, MCA, or \$150.

The Board recognizes the concern that potential buyers of leased properties may be deterred by increases in lease fees. The Montrust Supreme Court decision (*Montanans for the Responsible Use of the School Trust v. State of Montana, ex rel. Board of Land Commissioners and Department of Natural Resources and Conservation, 1999 Mont. 263; 989 P.2d 800*) was filed by a citizens' action group, *Montanans for the Responsible Use of the School Trust*, against the Montana Board of Land Commissioners and the DNRC, challenging fourteen school trust lands statutes, including §77-1-208, MCA, relating to cabin site leases. The decision, in pertinent part, states:

"¶26 The District Court (of the First Judicial District) ruled that §77-1-208, MCA, did not violate the trust because it requires that full market value be obtained. However, the District Court found that the Department had a policy of charging a rental rate of 3.5% of appraised value (hereafter, the rental policy) and that Montrust had introduced an economic analysis of cabin site rentals showing that the rental policy's 3.5% rate was 'significantly below a fair market rental rate.' The District Court concluded that the rental policy violated the trust's constitutional requirement that full market value be obtained for school trust lands... ¶31...we conclude that the rental policy violates the trust... In the present case, the trust mandates that the State obtain full market value for cabin site rentals. Furthermore, the State does not dispute the District Court's determination that the rental policy results in below market rate rentals. We hold that the rental policy violates the trust's requirement that full market value be obtained for school trust lands and interests therein."

Increases in lease fees as a result of the Montrust suit may have results that are unfavorable to present leaseholders, including fewer potential buyers for their properties and declining values of their improvements. Two previous Board decisions relevant to these concerns are DOR v. Louis Crohn, PT-1997-158, and DOR v. Burdette Barnes, Jr., PT-1997-159.

To date this Board has not been presented supporting evidence that the potential increase in lease fees have adversely impacted land or improvement values.

Montana statutes require that leased property be appraised at full market value (§77-1-208, MCA). Statutory law precludes the DOR from arriving at any value less than that.

The DOR has satisfactorily demonstrated to this Board that it has done so in accordance with statutory law and administrative rule.

#### **CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter.  
**§15-2-302, MCA and §77-1-208, MCA .**
2. **§77-1-208, MCA. Cabin site licenses and leases--method of establishing value.** (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue... The value may be increased or

decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, Chapter 2. (Emphasis supplied).

3. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).
4. The Board concludes that the Department of Revenue has properly followed the dictates of **§77-1-208 (1), MCA**, in assigning a market value to the subject property for lease fee purposes.
5. The appeal of the appellant is hereby denied and the decision of the DOR is affirmed.

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall remain on the tax rolls of Mineral County by the local Department of Revenue office at the 2000 tax year value of \$23,000, as determined by the Department of Revenue and affirmed by this Board.

Dated this 23rd day of October, 2001.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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GREGORY A. THORNQUIST, Chairman

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JERE ANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 23rd day of October, 2001, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Ellen Basque  
c/o Marc Basque  
H 77 Box 87  
Dixon, Montana 59831-9601

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Attn: Joyce Weaver  
Mineral County Appraisal Office  
County Courthouse  
Superior, Montana 59872

Attn: James Fairbanks  
Region 4 Lead  
Missoula County Appraisal Office  
Department of Revenue  
2681 Palmer  
Missoula, Montana 59802

Marvin Miller  
Land Use Specialist  
Department of Natural Resources and Conservation  
Plains Office  
P.O. Box 219  
Plains, Montana 59859

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DONNA EUBANK  
Paralegal

